IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

MFA.No. 322 of 2001()

OS.166/1995 of FAMILY COURT,KOLLAM
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APPELLANT: PLAINTIFF

KRISHNANKUTTY, S/O.NARAYANAN, VANIGOLIL VEEDU
THOTTINU VADAKKU MURI, CHAVARA, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:DEFENDANT

CHELLAMMA, D/O.VELUTHAKUNJU, VANIGOLIL KIZHAKKEKARA,
THOTTINU VADAKKU MURI, CHAVARA VILLAGE, KOLLAM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & A.K. Basheer, JJ.

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MFA.322 of 2001-C

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Dated this the 23rd day of January, 2007.

J U D G M E N T

Basheer, J:

Plaintiff in a suit for declaration and injunction is the appellant. The court below dismissed the suit holding that the appellant-plaintiff had failed in establishing his case that the respondent-defendant was not his wife. Hence this appeal.

2. It was admitted by the appellant/plaintiff in the suit that he and the defendant belonged to Pulaya community. He further admitted that while he was studying in the college, an intimate relationship had developed between him and the defendant. It was also conceded that the defendant had become pregnant through him and she had given birth to a child. But according to the appellant/plaintiff there was no marital relationship between him and the respondent/defendant. No customary marriage was performed. In fact the appellant had married one Devaki in accordance with the customary rites prevalent in the community. Children were also born in the said wedlock. When the marriage between Smt.Devaki was fixed, defendant had created problems and filed a petition under Section 125 of the Code of Criminal Procedure against him claiming maintenance. The learned Magistrate had awarded maintenance to the defendant and the child. Thereafter mediators had intervened and the dispute was settled at the time when the defendant had initiated steps to execute the order of maintenance passed by the learned Magistrate. According to the appellant/plaintiff it was agreed that he need pay maintenance only to the child and that defendant would not claim maintenance. But the

defendant had filed a petition before the court claiming enhancement of the maintenance award. The court passed an order enhancing the amount of maintenance over-ruling the objection raised by the plaintiff. Appellant realised that defendant had cheated him only when he received notice from the court in the above proceedings. It was in those circumstances that he had filed the above suit.

3. The respondent defendant had denied the entire allegations in the plaint. She contended that the appellant had married her on January 16, 1969 in accordance with the customary and religious rites. They had lived together as husband and wife and a male child was born in the said wedlock. Subsequently when the appellant got employment and became financially sound he deserted her and married another lady from a better family. Since the appellant had failed to maintain her and the child, she had moved the court for an order of maintenance. The court had allowed maintenance to her and the child after finding that she was the legally wedded wife of the appellant. The defendant further denied the contention of the appellant that the dispute was settled due to the intervention of mediators.

4. The court below framed the following issues:

1. Is the defendant the legally wedded wife of plaintiff?
2. Is the plaintiff entitled to the declaration prayed for?
3. Is the plaintiff entitled to the injunction prayed for?
4. Reliefs and costs?

Appellant got himself examined as Pw.1 and Exts.A1 to A4 were marked on his side. The defendant was examined as DW.1 and her witness was examined as DW.2. Ext.B1 was also marked on her side. The court below on an elaborate consideration of the oral and

documentary evidence on record found that the defendant was the legally wedded wife of the appellant/plaintiff.

5. We have been taken through the impugned judgment and also the other relevant materials on record. It is pertinent to note that the appellant/plaintiff had not adduced any evidence to substantiate his contention that he had married Smt.Devaki. It may be true that in some of the documents like Exts.A1 to A3 the name of Smt.Devaki is seen mentioned. But still there was no evidence from the side of the appellant to show that he married Smt.Devaki in accordance with the customary rites and ceremonies. On the contrary, the defendant had adduced cogent evidence that a customary marriage was performed between her and the appellant. She had also examined a witness on her side. It was in the above circumstances that the court below had, rightly in our view, repelled the contentions raised by the appellant.

6. The court below further noticed that the appellant had been paying maintenance to the defendant pursuant to an order passed under Section 125 of the Code of Criminal Procedure. Incidentally the court below noticed that the finding entered by the court in the above proceeding that there was a customary marriage between the appellant and defendant was never challenged by him all these years.

7. There was yet another crucial aspect which weighed heavily with the court below. In registered document (Ext.B1) executed by DW.2 in favour of the defendant shortly after the marriage between the appellant and defendant, the former had signed as a witness. He had described himself as the husband of the defendant. This document was executed in the year 1970.

8. Having gone through the materials on record, we do not find

any reason to interfere with the order passed by the court below. There is no merit in any of the contentions raised by the appellant.

Appeal fails. Accordingly it is dismissed, however without any order as to costs.

Kurian Joseph
Judge.

A.K. Basheer
Judge.

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